



competition commission
south africa

HYPOTHETICAL CASE 2020

1. Many South Africans rely on taxi and bus transport services to travel to and from work and school on a daily basis. In the Tshwane area, essential bus and taxi services are provided by Tremendous Tshwane Transport (Pty) Ltd (TTT), which has held a dominant position in this market for the past 10 years. Various other taxi and bus transport businesses operate in the same geographic area, but none hold a market share of more than 10%. One company, Budget Transport (Pty) Ltd (BT), entered the market 4 years ago. BT's focus has been on providing safe, reliable and cheap transport, with a view to growing its market share and becoming an effective competitor to TTT.
2. In its first year of operation BT grew its market share from 0% to 5%. In its second year of operation BT managed to secure a 15% market share. The secret of BT's success and rapid growth was its attractive low prices charged and the safe and efficient service provided to customers. On average BT charges a fare of approximately R20 for a taxi trip. For longer trips, such as for example between Johannesburg and Pretoria, BT charges R40. BT projected, in its business plan, that it will increase its market share to an ambitious 30% in 2020.
3. In July 2019 TTT implemented an intensive marketing campaign, emphasising the safety of its services provided, and offering commuters free Wi-Fi access onboard its buses and taxis. In addition, TTT (which usually charges on average R25 for a taxi

trip) dropped its fee for taxi transport by 20% and reduced its fee for taxi transport between Johannesburg and Pretoria from R50 to R30.

4. In October 2019 BT applied for voluntary liquidation, citing as the primary cause for its financial ruin the “undercutting” by TTT, which made it impossible for BT to compete with TTT on a sustainable basis and to cover its costs.
5. BT filed a complaint with the Competition Commission of South Africa (Commission), contending that TTT’s marketing plan and price reduction amounted to predatory pricing, which caused them to exit the market, when they would otherwise have become an effective competitor to TTT. BT contended that this is extremely prejudicial to everyday commuters who would no longer enjoy competitively priced transport.
6. The Commission referred a complaint to the Competition Tribunal (Tribunal), contending that TTT’s conduct amounted to an infringement of section 8(1)(d)(iv) of the Competition Act No 89 of 1998, as amended (Act).
7. During the course of the hearing before the Tribunal:
 - 7.1. BT’s Chief Executive Officer, Ms Samona Rachma, testified that:
 - 7.1.1. Both BT and TTT provided bus and taxi transport services, although BT’s bus services constituted only 10% of BT’s income;
 - 7.1.2. BT and TTT utilised the same marketing company, AbFab Marketing Pros (Pty) Ltd (AbFab);
 - 7.1.3. AbFab’s Mr Zane duBois mentioned to her over lunch in October 2019, that TTT’s marketing campaign was his most successful project to date and that, when the marketing plan and price reduction was formulated, BT’s fare prices and growth in the market, had been an important consideration.;

7.1.4. BT would have continued to expand its business and become a serious competitor to TTT, had TTT not undercut its prices and forced it out of the market.

7.2. The Commission submitted documentary evidence, including:

7.2.1. An excerpt from minutes of BT's 17 October 2019 board meeting, recording: *"All possible steps have been taken to streamline expenses, in order to match TTT's undercutting fares, but this is simply not sustainable. BT simply cannot afford to take the same knock that TTT is able to. Unfortunately, this means that BT is not able to continue with its operations and render a profit, while TTT continues with its reduced fare campaign. Since TTT seems likely to carry on with this campaign until BT is driven out of the market there is no sense going into the red even further. TTT's campaign has effectively strangled our hopes and ambitions for BT's future. It is resolved that BT will apply for voluntary liquidation."*

7.2.2. An email from TTT's Chief Marketing Executive, Mrs Fiona Mphana, to Mr Zane duBois stating: *"We want to make sure that we stay on top of this situation and do everything possible to keep BT from getting too big for its boots. Make sure you come up with a plan of action that keeps us the number 1 top dog!"*

7.2.3. An email from Mr Raymond Shengwe to Mrs Fiona Mphana, dated 2 April 2019, stating: *"Let's meet as soon as possible to strategise on the best way to deal with the BT situation. I think we should be able to get away with cutting our taxi fares to put a stop to the BT irritation factor. It will likely also give the other small guys a run for their money. Let me know your thoughts."*

7.3. TTT's Chief Financial Officer, Mr Raymond Shengwe, testified that:

- 7.3.1. TTT's fare reduction was applied only to taxi fares and not bus fares;
 - 7.3.2. TTT's bus and taxi transport services bring in an equal amount for TTT;
 - 7.3.3. Because TTT's bus fares were not decreased, TTT was able to offer the reduced fare for taxi services, whilst still making a profit;
 - 7.3.4. TTT was concerned about BT's sudden growth in the market and realised that it had to do something to retain its customers, which included offering them competitive taxi fares;
 - 7.3.5. Although BT was growing, it was not a real threat to TTT's business and it was never TTT's intention to drive BT out of the market;
 - 7.3.6. The reduction of TTT's taxi fares has benefited commuters, who are turning over every penny in the midst of a tough economic climate;
 - 7.3.7. BT was most likely not being run efficiently, or it would have been able to avoid its liquidation;
 - 7.3.8. It is contemplated that TTT will increase its taxi fare prices in March 2020, as the increase in fuel costs have rendered this necessary.
- 7.4. Both the Commission and TTT presented the evidence of their economic experts, respectively Mr Ferdinand Fourie and Ms Salome Swart. The experts' testimony was primarily directed at assisting the Tribunal in determining what would have happened in the counter-factual scenario.
- 7.5. The Commission argued that:
- 7.5.1. In the counterfactual, BT would have increased its market share to 30% of the market;
 - 7.5.2. The commuters using the bus and taxi transport services available in Tshwane were been prejudiced by TTT's conduct and this infringed their constitutional right to freedom of movement.

8. TTT contended that BT in any event was not running effectively. There is nothing wrong with competition between companies offering the same service. Rather, this kind of competition on pricing operates to the benefit of commuters,
9. The Competition Tribunal, after hearing all the evidence, found that TTT abused its dominant position (and so breached the section 8 prohibition) by implementing its reduced taxi fare campaign with exclusionary and predatory intent.
10. TTT has appealed this finding and the matter has been set down for hearing before the Competition Appeal Court (CAC). The CAC will now hear the appeal on the merits.
11. You are required to submit written Heads of Argument in the CAC on behalf of both the Appellant, TTT, and the Respondent, the Commission.
12. You must also prepare argument in support of your case at the CAC, on behalf of both the Appellant and the Respondent, as you will be called upon to represent both parties during the course of the moot oral component.